HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case

W.P. No. 1164 of 2003 (SS)

Tara Dutt Chaudhari & others vs. State of Uttaranchal and others.

Approved for reporting

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~~Not approved for reporting~~

Date of decision: 16.03.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1164 of 2003 (SS)

Tara Dutt Chaudhari & others ……. Petitioners.

Versus

State of Uttaranchal and others ……. Respondents

Sri K. N. Joshi, Advocate for the petitioner.
Standing Counsel for the respondents.

Dated: 16.03.2004

Hon'ble Rajesh Tandon J.

Heard Sri K.N. Joshi learned counsel for the petitioner and Standing counsel for the respondent.

By the present writ petition the petitioners have prayed for the issue of a writ or direction in the nature of mandamus commanding the respondents to pay the salary to the petitioner No.1 and other Assistant Teachers of C.T. Grade, working in the secondary Schools of State of Uttaranchal in the pay scale of Rs 5500-9000 and selection grade i.e pay scale of Rs 6500-10500 w.e.f 1-1-1996. With effect from 1-7-2001.

At the time of filing of the writ petition the following order was passed by the Court on 30.9.2003.

"In the meantime, the respondents are directed to show cause as to why the petitioners are not being paid salary according to revised pay scale.

Brief facts giving rise to the present writ petition are that the petitioners are teachers, working in Government High Schools and Intermediate Colleges of State of Uttaranchal.

After the appointment the petitioners as C.T. Grade in various colleges the petitioners were also given selection grade after 10 years of continuous and satisfactory services on the post of Assistant Teacher in C.T. grade.

The petitioners have stated that the pay scale which the petitioners were getting with effect from 1-1-1986 was further revised Rs. 4250-6400 with effect from 1-1-1996 but the petitioners were being paid the selection grade C.T. i.e. in the pay scale of Rs. 1450-2190, and therefore, he was entitled to be paid the salary in the revised pay scale of Rs. 4625-6750 with effect from 1-1-1996.

The petitioners have stated that in view of the recommendation of 5th pay commission, the pay scale of teachers, working in the Govt. High Schools and Intermediate Colleges, was revised from 1-1-1996 but in the said revision the pay scale of Assistant Teacher C.T Grade was not revised where as the pay scale of the Assistant Teacher working in Junior High Schools having same qualification and working in the pay scale of Rs 4250-6400 and selection grade i.e. pay scale of Rs. 4625-6750 was further revised of Rs 5500-90000 and the selection grade i.e. pay scale of Rs. 6500-10500 was payable since 1-7-2001 according to the 5th pay commission.

The respondents have filed a counter affidavit and contested the writ petition. They have asserted that the contention of the petitioners is wholly misconceived and without any basis. The petitioners are non-graduates and thus, they do not fulfill the essential academic qualification of L.T. grade Teacher. They have been merged in the L.T. Cadre because they do not possess the academic qualification necessary for the post of L.T. Grade Teacher. Thereafter,

their claim of the pay scale Lecturer's Grade is absolutely unfounded. Paragraph 7 of the writ petition to this effect is quoted below:

"*That the C.T. grade, has declared a dying cadre in the year 1989, and the C.T. grade merged in the L.T. Grade, the teachers who were working in C.T. grade, and they have completed their service 5 years in C.T. grade and total services 10 years satisfactory, they have given L.T. grade scale. The teachers who have graduate they have given L.T. grade post, after 5 years services in the C.T. grade teachers.*"

A rejoinder affidavit has been filed by the petitioners. Paragraph 6 of the rejoinder affidavit reads as under:

"*That the contents of the paragraphs no.4, 5 and 6 of the counter affidavit as stated are not admitted, hence denied. The C.T. Grade has declared as a dying cadre and the C.T. Grade teachers who have worked 5 years their serviced merged in the L.T. grade according to the Govt. order dated 10.7.98. The teachers who are working on the C.T. grade they have given the revised pay scale from 1.1.96, and the State Govt. has issued the Govt. order dated 2-.12.2001, in which the State Govt. has given they pay scale which is equivalent to the Central Govt. employees, from 1.7.2001 and the teachers who are teaching in the junior High School and their qualification and equivalent to the petitioners they have given the pay scale ordinary 5500-9000 selection grade 6500-10500 but only the grounds the C.T. grade has declared the dying cadre the petitioner has not given the revised pay scale in compliance of the Govt. order dated 20.12.2001.*"

The petitioners have stated that they have made a representation on 12.5.2003 for the payment of the salary in the pay scale of Rs 5500-9000 and the selection grade i.e. from Rs 6500-10500.

On the same date i.e. 20-5-2003 respondent no. 2 has sent the proposal for payment of the pay scale of Rs. 5500-9000 and selection grade i.e. pay scale of Rs6500-10500 to the petitioner No. 1 and other similar situated with effect from 1-1-1996 and payable since 1-7-2001 to the Assistant Teacher working in the Junior High School having same qualifications . The recommendation to the effect is quoted below:-

"महोदय

माननीय षिक्षा मंत्री जी के निर्देशन में षिक्षक संगठनों के साथ हुई वार्ता में सी0टी0 वेतनमान दिये जाने के सम्बन्ध में सहमति बनी है। भासनदे ा संख्या 160/वि0अनु0–3 /2001 दिनांक 20 दिसम्बर, 2001 में पद की समानता के आधार पर सं ाोधित पंचम केन्द्रीय वेतनमान में जूनियर हाईस्कूल के सहायक अध्यापक (वेतनक्रम 4250–6400) को 1–1–1996 से आधार लेकर 1–7–2001 से वेतनक्रम 5500–175–9000 स्वीकृत किया गया है। केन्द्रीय वेतनमान में सी0टी0 पद (वेतनक्रम 4250–6400) का उल्लेख न होने के कारण सी0टी0 पदधारको का वेतनमान संशोधित नही हो पाया है। विभिन्न पुनरीक्षित वेतनमानो में जू0हा0 स्कूल के सहायक अध्यापक एवं माध्यमिक विघालयों के सी0टी0 पदधारकों का वेतनमान समान रहा है, जिसका विवरण निम्नवत है–

वर्ष	स0अ0जू0हा0 स्कूल	मध्यमिक विघालयों के सी0टी0 संवर्ग को अध्यापक
1979	450–720	450–720
1986	1350–2070	1350–2070 (चयन वेतनमान 1450–2190)
1996	4250–6400 (चयन वेतनमान 4625–6750)	4250–6400 (चयन वेतनमान

		4625—6750)
1996	केन्द्रीय वेतनमान 5500—9000 (आधार 1—1—1996) (चयन वेतनमान 6500—10500) देय 1—7—2001	— —

अतः माध्यमिक विघालयों में सी0टी0 संवर्ग के शिक्षकों के वेतनमान 1—1—1996 के आधार पर 1—7—2001 से जू0हा0स्कूल स्तर के स0अ0 के वेतनमानों के समान साधारण व चयन वेतन आदि सं ाोधित किये जाने की संस्तुति की जा रही है।

भवदीय ,
ह0 / —20—5—2003
षिक्षा निदेषक
उत्तरांचल ।

Petitioners have submitted that the Assistant Teachers working in the Junior High School having same qualification and discharging the same duties are being paid the salary of Rs 5500-9000 and the selection grade to the extent of Rs. 6500-10500 whereas the petitioner no. 1 and others are being paid a salary of Rs 4250-6400 and selection grade i.e. pay scale Rs. 4625-6750.

According to the petitioners they are qualified and are having B.T.C. Certificates, where appointed on the post of Assistant Teachers C.T. Grade at Government High Schools and Inter Colleges.

Petitioners have further submitted that since the C.T. cadre has become dying cadre and as such all the petitioners therefore are entitled for the benefits of the revised pay scale as per applicable to other trained similarly situated teacher.

The petitions have submitted that on 23rd September 2002 State of Uttaranchal has sent a letter to the following effect:

The petitions have submitted that on 23rd September 2002 State of Uttaranchal has sent a letter to the following effect:

ऐसे सी0टी ग्रेड शिक्षक जो एल0 टी0 ग्रेड हेतु निर्धरित अर्हता नहीं रखते थे और उनका एल0 टी0 ग्रेट में ं सविलियन नही हो पाया है के वेतन निर्धारण के सम्बन्ध में रिट याचिका संख्या 5545 एस0एस0 1992 तथा 1259 एस0एस0/97 में मा0 उच्च न्यायालय के आदेश दिनांक 15.10.99 में सी0टी0 ग्रेड शिक्षकों की 5 वर्ष पर एल0 टी0 ग्रेड एवं अन्य लाभ अनुमन्य किया जाने के आदेष पारित किये है इस सन्दर्भ में आप द्वारा आवश्यक प्रस्ताव शासन को अविलम्ब प्रस्तुत किये जायेगे। जिस पद विधिक परामर्श प्राप्त कर निर्णय लेकर ततसमय सी0टी0 ग्रेड के पद धारकों को पद से पद की समानता के अनुरूप वेतनमान अनुमन्य करने पर विचार किया जायेगा।

Counsel for the petitioner has referred the judgment of the Allahabad High Court in Smt. Aruna Ghosh Vs. State of U.P. and others 1995 Vol 2 page 763 U.P. Local Bodies and Educational Cases. Where High Court of Allahabad has referred Regulation 7(2) of Chapter II of the Regulations made under U.P. Intermediate Education Act has been referred in order to give the benefit of the pay scale of L.T. Grade to the Teachers as the C.T. Grade was declared as dying cadre. The observations of the Allahabad High Court in this connection are quoted below;-

Paragraph- 3 "Petitioner, it is not disputed was appointed as a permanent Assistant Teacher in B.T.C. Grade on 19-2-1981. He completed 5 years of substantive in B.T.C. Grade on 19-2-86. Since he was possessed of B.A, B.Ed . Degrees, he became entitled to C.T. Grade on completion of 5 years of substantive service in terms of Regulation 7(2) of Chapter II of the Regulations made under U.P. Intermediate Education Act which reads as under:-

"7(2) जहॉ किसी संस्था में जे0टी0सी0/बी0टी0सी0 श्रेणी में कार्यरत किसी अध्यापक ने इण्टरमीडिएट या समकक्ष परीक्षा उत्तीर्ण कर ली हो या वह प्रशिक्षित स्नातक हो और उस श्रेणी में पॉच वर्ष की सेवा पूर्ण कर ली हो,

तो प्रबन्ध समिति द्वारा सी0टी0श्रेणी में पदोन्नति किया जायेगा और ऐसी पदोन्नति की सूचना निरीक्षक को तुरन्त दी जायेगी।"

<u>Paragraph-4</u> *"That fact that the aforesaid provision was deleted by means of notification NO.4168/15-7-10(160) 1991 T.C. Lucknow dated 19-8-92 would not affect the right already acquired by petitioner. The Government order dated 19-8-1992 omiting Regulation 7(2) cannot be given restropescetive effect so as to affect right already acquired by the petitioner under the said provision as it stood before its omission w.e.f. 19-8-1992. The stand taken in the counter affidavit that the petitioner was not entitled at C.T. Grade merely because of the omission of Regulation 7(2), in view of the notification dated 19-8-92, cannot, therefore, be countanced.*

<u>Paragrah- 5 "</u> *The next question that arises for consideration by the Court is; whether the petitioner is entitled to be given L.T. grade in terms of Paragraph 12 of the G.O dated 19-10-1989 which reads as below:-*

" शासनादेश संख्या <u>3299/15–7–/89–1</u> (136) 89 शिक्षा अनुभाग –7 , दिनांक 11 अगस्त ,89 द्वारा सी0टी0 ग्रेड को डाइंग कैंडर घेशित कर दिया गया है। इस प्रकार अशासकीय सहायता प्राप्त उच्चतर माध्यमिक विघालयों में सी0टी0 ग्रेड का कोई पद सृजित नहीं किया जायेगा और न किसी अध्यापक की नियुक्ति की जायेगी शासनादेश संख्या <u>–वे0आ0–2–1239/दस</u> –8–बी/ 89 वि0वे0आ0 अनुभाग 2 दिनांक जून 89 के बिन्दू 9 के अनुसार माध्यमिक विघालयों के सी0टी0ग्रेड के ऐसे अध्यापक जो प्रशिक्षित स्नातक उपाधि के साथ एल0टी0,बी0एड0 हो तथा उनके द्वारा 10 वर्ष की सन्तोसजनक सेवा पूरी की जा चुकी हो उन्हे एल 0टी0ग्रेड दिया जायेगा तथा उनका वेतन निर्धारण उपरोक्त प्रक्रिया के अनुसार एल0टी ग्रेड में किया जायेगा। एल0टी0 ग्रेड में जाने वाले ऐसे सी0टी0 ग्रेड के शिक्षक, वेतन निर्धोरण की तिथि को चाहे साधारण वेतनमान में कार्यरत रहे हो या सेलेक्शन ग्रेड में, उनका वेतन निर्धारण एल0टी0 ग्रेड के साधारण वेतनमान में किया जायेगा।"

Paragraph-6 *" The aforesaid provision was amended by means of a subsequent G.O dated 30-11-1989/2-12-1989 and the amended Paragraph 12 reads as below:-*

" शासनादेश संख्या 3299/15–7/8951(136)/89, षिक्षा अनुभाग–7 दिनॉक 11 अगस्त 89 द्वारा सी0टी0ग्रेड को डाइंग कैडर घोषित कर दिया गया है। इस प्रकार अशासकीय सहायता प्राप्त उच्चतर माध्यमिक विघालयों में सी0टी ग्रेड का कोई पद सृजित नही किया जायेगा और न किसी अध्यापक की नियुक्ति की जायेगी। शासनादश संख्या वें0आ0–2–1239/दस 0–बी /89, वि0वे0आ0अनुभाग –2 दिनांक 3 जून 89 के बिन्दू के अनुसार माध्यमिक विघालयों के सी0टी0/बी0 एड0 अथवा सी0टी0ग्रेड में प्रक्षित स्नात्क(स्नातक उपाधि के साथ एल0टी/बी0एड0 अथवा सी0टी0 ग्रेड में प्रशिक्षित स्नातक जिन्होने इस वेतनक्रम मेंपॉच वर्ष की सेवा पूर्ण कर ली हो) तथा उनके द्वारा 10 वर्श की सन्तोशजनक सेवा पूरी की जा चुकी हो, उन्हें एल0टी0ग्रेड दिया जायेगा तथा उनका वेतन निर्धारण उपरोक्त प्रक्रिया के अनुसार एल0टी0 ग्रेड किया जायेगा। एल0टी0 ग्रेड में जाने वाले ऐसे सी0टी0 ग्रेड के शिक्षक वेतन निर्धारण की तिथि को चोह साधारण वेतनमान में कार्यरत रहे हो या सेलेक्शन ग्रेड में, उनका वेतन निर्धारण एल0टी0 ग्रेड में साधारण वेतनमान में किया जायेगा**"**

Paragraph-7 *" It is evident that a C.T Grade teacher would be entitled to get L.T Grade if he was completed 5 years service in C.T. Grade and 10 years satisfactory service as a teacher and is possessed of the requisite training and other academic qualification. The petitioner has certainly completed 5 years service in C.T. Grade but the question whether 10 years of his overall tenure as a teacher was satisfactory is a question which requires to the determined. In case it is found that his overall service as a teacher during last 10 years had been satisfactory, he would be entitled to L.T. Grade.'*

Paragraph-8 *" In view of the above discussion I am of the considered view that the petitioner is entitled to be given C.T grade w.e.f. 19-2-*

1986 and his claim For L.T. Grade requires to be considered at the level of the District Inspector of schools in accordance with law and in the light of the observation made in the body of judgment."

The aforesaid Judgment has been followed in another judgment in Madan Lal Agrawal VS. The District Inspector of Schools Bijnor and others 1996 (3) ESC 202(All.) where it has been held as under:-

Paragraph- 7 " Thus I am respectful agreement with my brother, Hon'ble Mr. Justice S.R.Sing, while deciding the case of Smt. Aruna Ghosh(supra). The aforesaid judgment in Smt. Aruna Ghosh does not require any explanation except to the extent to say so expressly that under the different Government Orders issued from time to time the teachers working in C.T Grade become eligible to be considered for L.T. Grade as a personal pay scale."

Paragraph-9 "As the question of eligibility of the petitioners requires investigation of facts, the District Inspector of Schools is directed to examine the individual cases for their respective claims in accordance with law and in the light of the observations made in the judgment within a period of three months from the date of production of a certified copy of this order in their cases."

Further in Santosh Kumar Singh Vs. District Inspector of Schools, Meerut and others 1995(3) ESC 21 (All.). The observations are quoted below;-

Paragraph-2 " In the counter affidavit filed on behalf of the District Inspector of Schools it is stated in Para 6 that only those, C.T Grade teaches who have completed five years will be promoted as L.T. Grade teacher who are found to be suitable. In my opinion this is a

wrong interpretation of the Government order dated 3-9-89. The C.T. Grade is not a dying cadre and those who have completed 5 years in C.T. Grade automatically become .L.T. Grade teachers, and there is no question of considering their suitability . Since the petitioner was appointed as C.T. Grade teachers on 1-12-84 he completed five years on the post on 1-12-89 he is entitled to be promoted on L.T. Grade respectively from 1-12-89."

The respondents are directed to consider the claim of the petitioners with regard to selection grade as well as for the pay scale as recommended by the Director in his letter dated 20-5-2003, within a period of 6 weeks after the receipt of the certified copy of the order.

Consequently, the writ petition stands disposed of. No orders as to costs.

(Rajesh Tandon, J.)

Dated: 16.3.2004
*Dhyani